

Operation Disney World (II)

Post 11/21/73

"If it had gone to the Supreme Court—and I know many of my friends argued, 'Why not carry it to the Supreme Court and let them decide it?'—that would, first, have had a confrontation with the Supreme Court, between the Supreme Court and the President. And second, it would have established very possibly a precedent, a precedent breaking down constitutionality that would plague future Presidencies, not just this President."

THUS MR. NIXON, in his Saturday night question-and-answer session with the Associated Press Managing Editors, elaborated on his reasons for failing to carry his fight to protect the secrecy of the White House tapes subpoenaed by Archibald Cox to the Supreme Court. We cite at some length his remarks on the subject because they strike us as characteristic of the quality of the President's defense as a whole. It is marked by a perpetual shifting of argument, a series of astounding assumptions and a facility for distorting the facts of the case.

Consider only the quotation we have cited. Mr. Nixon, who on October 20th was declaring he was "confident" he would have won an appeal to the Supreme Court but didn't think it would be wise to leave the question open for the time it would take the Supreme Court to rule, now suggests that the prospect of losing was a strong factor in his decision not to appeal. So far as astounding assumptions are concerned, we invite your attention to the President's assumption that a Supreme Court ruling against him would have been of dubious constitutionality (surely the thing works the other way round). And finally, on the facts of the matter, does anyone have any doubt that the reason the President abandoned his plan to seek a Supreme Court test was that he considered he had a better chance of preserving the secrecy of the tapes by cooking up his co-called "compromise" or that he ultimately only agreed to release them to Judge Sirica as a consequence of the uproar brought on by his mishandling of Mr. Cox and the issue as a whole?

Yesterday in this space we addressed ourselves to Mr. Nixon's discussion of his taxes and to his misuse of two of his predecessors in the course of justifying his actions. Today we will deal briefly with the President's arguments concerning the Watergate case itself.

Mr. Nixon's observations on the Watergate case, of course, revolved around the twin issues of Mr. Cox and the forbidden tapes. It is at least curious that the President who had a great deal to do with delaying Mr. Cox's investigation had the temerity to complain about that delay. Thus Mr. Nixon who earnestly discussed the reasons it had taken him so long to discover that two of the tapes did not exist and who, at least by indirection, acknowledged that he himself had been in a protracted and time-consuming legal battle with the Special Prosecutor concerning the White House documents that would be made available to the prosecution, in the same breath observed that the Special Prosecutor had taken much too long to get his cases into court. What does Mr. Nixon think Archibald Cox was doing for much of that time—if not battling the White House in order to acquire the material he regarded as necessary to bring those cases in an orderly and effective way, material which Mr. Nixon sought to deny him?

When Mr. Nixon observed that Assistant Attorney General Henry Petersen, who was replaced on the Watergate case by Mr. Cox, claimed to have had the case 90 per cent completed when it was put in Mr. Cox's

hands, he again misled his audience. That is because, in the first place, Henry Petersen was referring exclusively to the case concerning the burglary of Democratic headquarters on June 17, 1972, and the subsequent cover-up, and in the second place, because Mr. Petersen's claim referred to a period before it had been revealed that any White House tapes even existed—a revelation that inevitably produced attempts on the part of the Special Prosecutor to gain access to this potentially crucial new evidence.

Nor does the President's explanation of his delay in informing the court of the non-existence of two of the subpoenaed tapes overwhelmingly persuade. If Mr. Nixon is so clear in his mind that he made the June 20, 1972, phone call to John Mitchell on a White House telephone that was not part of his recording system—he even recalls that he was on his way in to dinner when he placed the call—how could it have taken him from late September to late October to ascertain this fact? How is it, for that matter, that he wasn't aware there was no such tape back in July when Mr. Cox subpoenaed a tape of the call? If Mr. Nixon is now only deducing from the absence of a tape that he must have made the call on the phone in question, he is merely offering us a theory, not an assertion of fact—and if, on the contrary he is offering a clear recollection of fact, there is hardly any explanation for the many months it took him to remember or disclose it.

The case for the President's delay in discovering the nonexistence of a tape of his crucial April 15 conversation with John Dean is not much more persuasive. The President is known to have spent many hours on June 4th listening to tapes of conversations he'd had with Mr. Dean; the April 15 conversation was among the most important of these; and Mr. Cox subpoenaed this tape also in mid-July. Mr. Nixon, however, asks us to accept his argument that he did not discover that there was no tape until late September and that he had less sense of urgency about finding it than he had about the others because only Mr. Cox—and not the Ervin Committee—had asked for it. Since the President did not intend to produce tapes for the Ervin Committee in any event, and since the Ervin Committee (unlike Mr. Cox) lost its case in court to gain access to them, it is hard to see how a desire to propitiate the Ervin Committee requests could have figured so prominently in Mr. Nixon's actions at the time.

So much for Mr. Nixon's capacity to twist beyond recognition the already complex matter of the tapes. And so much for his desire once and for all to clarify these matters with candor. Because the President has attached such great importance to this latest "once and for all" effort to set the record straight, we think it equally important to examine his words and the facts to which he alludes with great care. Therefore, we intend to return to the subject of Operation Candor. There is yet much to discuss.